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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,844	04/05/2004	Harold C. Fleischer III	P24862	2706

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EXAMINER

TAYLOR, BARRY W

ART UNIT PAPER NUMBER

2643

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/816,844

Applicant(s)

FLEISCHER ET AL.

Examiner

Barry W Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 7, 13 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,490,345 (Fleischer, III et al hereinafter *Fleischer*). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Independent claims 1 and 7 of this pending application and claim 4 of U.S. Patent No. 6,490,345 (*Fleischer*) are similar in scope with some obvious wording variations. For example, the independent claims 1 and 7 use the term "control point" and *Fleischer* uses "service control point" to forward, to the switching point. Another example, is independent claim 1 and 7 of this pending application use the terms "billing

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record of a first type" and "billing record of a second type" which are met by Fleischer using "normal billing record" (i.e. second type) and "unique billing record" (i.e. first type).

In other words, independent claims 1 and 7 of this pending application start out by the switching point generating normal billing record (i.e. second type) and when call type code is eligible for discounting, the first type sent from control point is used to modify the normal billing record to reflect discount. Fleischer, on the other hand, first starts out by the switching point receives unique billing record to be used for discount then creates normal record if no discount to be applied.

Independent claims 13 and 16 are similar to independent claim 1 and 7 with an addition of terms "IntraLATA call and voice call". However, Fleischer independent claim already recites discounting customers serviced in a wide area centrex/PBX network that includes an abbreviated dialing plan to which subscribers subscribe which reads on IntraLATA.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (5,987,107) in view of Wulkan et al (5,862,203 hereinafter Wulkan).

Regarding claims 1, 7, 13 and 16. Brown teaches a method for discounting a customer's billing for a telephone calls comprising:

determining a call type code based upon the calling station and called station (see call type accumulators left side of figure 4, see #34 figure 3---identifying call type for each call item, see plurality of call type codes listed in figures 5A and 5B---For example, call type code 16 is PBX and call type code 22 is TRUNK CALL, see figure 5C wherein direct dial trunk call has type code 31 and international direct dial has code type 35); determining whether the call type code is eligible for discount billing (see right side of figures 5A-5C wherein after type codes are assigned process flows (i.e. "TO 111" at bottom of figures 5A-5C) to determine if customer is eligible for discount billing as shown at the top of figure 5D wherein after type codes are assigned from figures 5A-5C then discount is determined), when call type code is eligible, generating a unique billing record (see col. 5 lines 57-67 wherein calling circles are used to establish unique billing record), modifying the billing record (see number 49 figure 4 wherein discount applied to

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each value accumulated in the category where after the discount is used to produce final bill); and discounting the billing for a completed call based upon the modified billing record (see number 49 figure 4 wherein discount applied to each value accumulated in the category where after the discount is used to produce final bill); and when the call type code is ineligible, create a normal billing record (see left side of figure 5D wherein if the type code does not qualify for discount then the "NO" branch is followed to determine if prefix is included in the telephone number called to determine the premium rate (i.e. normal billing record) because premium rate services do not generally fall within any discounting scheme (col. 9 lines 50-54)).

Brown does not explicitly show area Centrex/PBX network that includes an abbreviated dialing plan. However, Brown teaches discounting based upon call volume (col. 9 lines 23-54) centered around a computerized exchange (col. 3 lines 18-21).

Wulkan also teaches a call management system (see 250 figure 8) having a tariff data server (see 252 figure 8) wherein the tariff data server contains server database (see 282 figures 8 and 9) comprising of individual databases listed in figure 10 including an OCP (i.e. Optional Calling Plans). Wulkan teaches discount calculation for "discounted countries", volume "discounts", "discount" percentage (i.e. MCI's 'friends and family'), "discounted" NPAs (i.e. IntraLATAs); discounted telephone numbers, etc. (see columns 11-13 especially bottom of column 13). Wulkan further defines the OCP database includes plurality of parameters including abbreviated dialing plan (see col. 13 lines 41-60) may be combined with volume type calls to receive discount. Wulkan

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shows other abbreviated dialed access numbers may also be used (see Access Database 304 figure 10 and col. 14 lines 3-12). Wulkan further shows the system may be adapted to perform call management for users of PBX (see system 250 adapted to perform call management for PBX 266 figure 8). Wulkan gives other examples for discount calling (see col. 22 line 56 – col. 23 line).

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the intelligent network as taught by Brown to use the data server as taught by Wulkan for the benefit of offering additional volume discounts to PBX and Centrex systems users.

Regarding claims 2 and 8. Wulkan teaches discounting for PBX and Centrex stations (col. 9 lines 5-11).

Regarding claims 3, 9, 14 and 17. Brown does not explicitly show charging the customer a flat rate feature charge.

Wulkan also teaches a call management system (see 250 figure 8) having a tariff data server (see 252 figure 8) wherein the tariff data server contains server database (see 282 figures 8 and 9) comprising of individual databases listed in figure 10 including an OCP (i.e. Optional Calling Plans). Wulkan further defines the OCP database includes plurality of parameters (see col. 13 lines 41-62) wherein abbreviated dialing plan (see col. 13 lines 59-60 wherein “1-800” calls) may be combined with volume type calls to receive discount. Wulkan shows other abbreviated dialed access numbers may

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also be used (see Access Database 304 figure 10 and col. 14 lines 3-12). Wulkan further shows the system may be adapted to perform call management for users of PBX (see system 250 adapted to perform call management for PBX 266 figure 8). Wulkan gives other examples for discount calling (see col. 22 line 56 – col. 23 line) which include fixed or percentage discounts.

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the intelligent network as taught by Brown to use the data server as taught by Wulkan for the benefit of offering fixed amount or percentage discounts to PBX and Centrex systems users having same telephone owner for multi-site companies as taught by Wulkan (see “Deterministic Parameters” starting at the bottom of column 22 and continuing to column 23).

Regarding claims 4 and 10. Wulkan further shows IntraLATA call (col. 1 lines 19-35, col. 7 lines 40-55, col. 9 lines 5-23, col. 9 lines 53-62, col. 13 line 41 – col. 14 line 26, col. 17 lines 5-36).

Regarding claims 5 and 11. Wulkan further teaches voice call (col. 10 lines 11-47, col. 13 lines 9-16, col. 15 line 11 – col. 16 line 14, col. 17 lines 5-35, col. 34 lines 40-57).

Regarding claims 6, 12, 15 and 18. Brown does not explicitly show the customer receives a reduced periodic charge for eligible calls.

Wulkan also teaches a call management system (see 250 figure 8) having a tariff data server (see 252 figure 8) wherein the tariff data server contains server database (see 282 figures 8 and 9) comprising of individual databases listed in figure 10 including an OCP (i.e. Optional Calling Plans). Wulkan further defines the OCP database includes plurality of parameters (see col. 13 lines 41-62) wherein abbreviated dialing plan (see col. 13 lines 59-60 wherein "1-800" calls) may be combined with volume type calls to receive discount. Wulkan shows other abbreviated dialed access numbers may also be used (see Access Database 304 figure 10 and col. 14 lines 3-12). Wulkan further shows the system may be adapted to perform call management for users of PBX (see system 250 adapted to perform call management for PBX 266 figure 8). Wulkan gives other examples for discount calling (see col. 22 line 56 – col. 23 line) which include fixed or percentage discounts, as well as term commitment discounts, pre-selected agreements and special time limited promotions .

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the intelligent network as taught by Brown to use the data server as taught by Wulkan for the benefit of offering pre-established discounts to PBX and Centrex systems users so that special time limited promotions may be offered to users.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor whose telephone number is (703) 305-4811. The examiner can normally be reached on Monday-Friday from 6:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 customer service Office whose telephone number is (703) 306-0377.

A handwritten signature in black ink, appearing to read "Barry W. Taylor", with a long horizontal flourish extending to the right.

Barry W. Taylor  
Patent Examiner  
Technology Center 2600  
Art Unit 2643